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OFFICE OF PETITIONS

In re Application of	:	
Levy et al.	:	
Application No. 10/041,950	:	DECISION ON
Filed: October 19, 2001	:	PETITION
Attorney Docket No. HEMAC:58774	:	

This is a decision on the "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)," filed November 1, 2004.

The above-identified application became abandoned for failure to timely pay the required issue fee (and publication fee)¹ within the statutory period of three (3) months from the mailing date, June 29, 2004, of the "Notice of Allowance and Issue Fee Due." No extensions of time are permitted for transmitting issue fees. Accordingly, the above-identified application became abandoned on September 30, 2004. A Notice of Abandonment was mailed on November 2, 2004.

Petitioner contends that a response, including a check in the amount of \$1660, with certificate of mailing under 37 CFR § 1.8 signed by James W. Paul thereon was mailed to the Office on August 25, 2004. On October 25, 2004, applicant became aware that the check had not been cashed and filed the instant petition along with another payment of the fees due at the rate in effect on November 1, 2004.

The petition did not include a copy of the PTOL-85B or a statement from Mr. Paul. See 37 CFR 1.8(b). Nonetheless, a review of the record reveals that the Issue Fee transmittal stamped with a date of receipt by the Office of (Monday) August 30, 2004 is present in the application file. Moreover, finance

¹ The Office did not set a concurrent but distinct requirement for drawings.

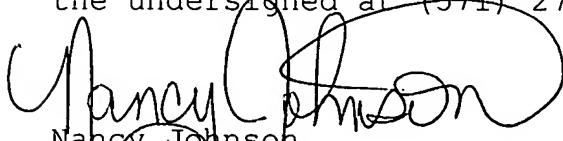
records indicate that the check accompanied the PTOL-85B². In addition, the PTOL-85B included an authorization to charge any required fees to petitioner's Deposit Account and finance records show that the Deposit Account had more than sufficient funds to pay the required fees.

In view thereof, the petition pursuant to 37 CFR § 1.181 (no fee) is GRANTED, and the holding of abandonment is withdrawn.

Consideration of the petition under § 1.137(a) was not necessary. Accordingly, the petition fee of \$110 is being refunded to petitioner's Deposit Account, as authorized.

The Office of Patent Publication has been advised of this decision. The application is thereby forwarded to Publication for processing into a patent.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3219.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions

². As reflected in the Office letter to applicant mailed November 24, 2004, the Office subsequently presented the check to the bank. It was returned due to a stop payment order. The record is not clear as to when the check was presented or when the stop order was entered. However, petitioner did pay the \$50 processing fee.